

Omaha and North Western Railroad  
P.O. Box 51 • Boys Town, Nebraska 68010  
TELEPHONE 402 • 680 • 6994

August 17, 2010

Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street SW  
Washington, D.C. 20423

RE: Finance Docket No. 35405, *C.T. Chappellear dba Omaha and North Western Railroad – Feeder Railroad Development Application – Line of Nebraska Railroad Museum Between Fremont and West Point, Nebraska*

Dear Ms. Brown:

227673

Enclosed are the original and ten copies of the Omaha and North Western Railroad's ("ONW") Petition for Waiver, pursuant to 49 C.F.R. § 1151.2(j).

Please time and date stamp the additional copy of this letter and the Petition and return them in the provided envelope. Thank you for your assistance.

If you have any questions, please call me.

**ENTERED**  
**Office of Proceedings**

AUG 20 2010

**Part of**  
**Public Record**

Sincerely,

A handwritten signature in black ink, appearing to be "C.T. Chappellear".

C.T. Chappellear, Owner  
Omaha and North Western Railroad

Enclosures

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C.**

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**Finance Docket No. 35405**

**C.T. CHAPPELEAR, dba OMAHA AND NORTH WESTERN RAILROAD  
– FEEDER RAILROAD DEVELOPMENT APPLICATION –  
LINE OF NEBRASKA RAILROAD MUSEUM  
BETWEEN FREMONT AND WEST POINT, NEBRASKA**

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**PETITION FOR WAIVER**

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**C.T. Chappelear, Owner  
Omaha and Northwestern Railroad  
P.O. Box 51  
Boys Town, Nebraska 68010  
(402) 680-6994**

**Dated: August 17, 2010**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C.**

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Finance Docket No. 35405

**C.T. CHAPPELEAR, dba OMAHA AND NORTH WESTERN RAILROAD  
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**PETITION FOR WAIVER**

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Pursuant to 49 C.F.R. § 1151.2(j), C.T. Chappellelear, dba Omaha and North Western Railroad (“ONW”) respectfully petitions the Surface Transportation Board (“Board”) to waive certain regulations found at 49 C.F.R. § 1151.3, *et seq.*: (1) § 1151.3(a)(3)(i), § 1151.3(a)(4) and § 1151.3(a)(5) regarding estimating the net liquidation value (“NLV”) and going concern value (“GCV”) and payment of the higher of the NLV and GCV due to unauthorized discontinuance of service, abandonment and sale of the below described rail line, and to set the constitutional minimum value; and (2) § 1151.3(a)(11)(i) since there are no longer shippers along the below described rail line due to the unauthorized discontinuance of service, abandonment and sale of the line.

ONW will be filing a Feeder Railroad Development Program (“feeder line”) application with the Board to acquire and operate an approximate 37.5 mile rail line between Milepost 1.5 at Fremont, Nebraska and Milepost 39.0 at West Point, Nebraska (the “Subject Line”). The Subject Line is currently owned by the Nebraska Railroad Museum (formerly the Eastern Nebraska Chapter, National Railway Historical Society) (“NRM”) and operated as a tourist railroad. The Subject Line was originally part of Chicago and North Western Transportation Company’s (“CNW”) “Norfolk-Fremont Line” which was abandoned in 1984. *See Chicago and North*

*Western Transportation Company – Abandonment Exemption – Dodge, Cuming, Stanton and Madison Counties, NE*, Docket No. AB-1 (Sub-No. 180X) (ICC served February 25, 1984). CNW sold the then abandoned Subject Line to NRM in 1986. In 1987, NRM formed Fremont, West Point and Pacific Railway, Inc. (“FWPP”) to provide freight service along the Subject Line. *See Fremont, West Point and Pacific Railway, Inc.; Exemption, Operation, Certain Abandoned Railroad Lines Owned by Eastern Nebraska Chapter, National Railway Historical Society in Dodge and Cuming Counties, NE*, Finance Docket No. 31147 (ICC decided October 30, 1987).

However, in 1988, the State of Nebraska’s Secretary of State administratively dissolved FWPP for non-payment of taxes; NRM began salvaging the Subject Line from approximate Milepost 19.0 near Hooper, Nebraska to Milepost 39.0 at West Point, Nebraska (the “Northern Segment”) and proceeded to sell, in fee simple, the Northern Segment to nearby landowners, businesses and the State of Nebraska Department of Roads. Freight service at that time also stopped from Milepost 1.5 at Fremont, Nebraska to approximate Milepost 19.0 near Hooper, Nebraska (the “Southern Segment”). Upon search of the records of the Board and the Federal Register, ONW has been unable to find any record that either NRM or FWPP filed for or was authorized to discontinue service or abandon any part of the Subject Line.

ONW petitions the Board to waive § 1151.3(a)(3)(i), § 1151.3(a)(4) and § 1151.3(a)(5) regarding estimating the net liquidation value (“NLV”) and going concern value (“GCV”) and payment of the higher of the NLV and GCV due to the situation NRM has caused. ONW believes that the Subject Line has no GCV. STB and ICC precedent firmly establish that an applicant in a feeder line proceeding is not required to present evidence of a line’s GCV when the line is uneconomic.

Shortly after enactment of the feeder line statute, the ICC observed, “[u]nder this statutory scheme, a profitable line could be valued at either the going concern value or the net liquidation value. An unprofitable line, however, would *always* be valued at its net liquidation value.” *Chicago and North Western Transp. Co. – Abandonment between Ringwood, IL, and Geneva, WI*, Docket AB-1 (Sub-No 70F), 363 I.C.C. 956, 958 (n.1) (1981) [emphasis added]. Similarly, in *PSI Energy, Inc. – Feeder Line – Norfolk Southern Corp.*, Finance Docket No. 31068, 7 I.C.C.2d 227, 230 (1990), the ICC stated, “the intent of our filing requirements was not to force an applicant to develop its case according to a GCV basis which according to the applicant, has no factual foundation in the case at hand. Our regulations merely alert potential applicants to the fact that GCV may be an issue in their case.” Thus, in *PSI Energy*, the ICC declined to reject an application that did not contain GCV evidence because the subject line had not been operated for a number of years and was in need of substantial rehabilitation. *See also Sandusky County – Feeder Line Application – Conrail*, Finance Docket No. 31438, 6 I.C.C.2d 568, 571-572 (1990).

Although ONW can supply the argument and estimate of a GCV of zero or negative for the Subject Line, the NLV is a trickier situation. NRM has been reusing salvaged rail and ties from the Northern Segment on the Southern Segment for the last 20 years. The Subject Line has experienced deferred and minimal maintenance for over 30 years, and it is showing. Vegetation is overgrowing the track, ties are rotting and rail is desperately in need to be replaced. Any NLV from the Southern Segment would derive from the real estate and scrap metal. Taking into account salvaging costs, ONW would expect the NLV to be near zero.

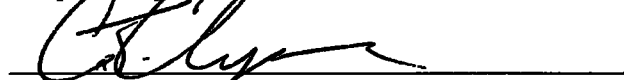
Further, NRM has already liquidated over half of the rail and track materials and unlawfully deeded the Northern Segment away without any easements for freight service. ONW

believes that the NLV of the real estate of the Northern Segment through lawful real estate transactions is unknown. The largest variable that ONW sees is the number of lawsuits the current possessors of the land may cause and the resulting court and attorney fees in liquidating the real estate. Even though ONW is confident that such lawsuits would fail, the costs involved could potentially very high. A potential for lawsuits would depress the prices of the land for potential purchasers, and the current possessors may not wish to pay for the property a second time. ONW believes the potential of lawsuits would cause the NLV of the Subject Line to be zero or negative.

In light of these matters, ONW requests that the Board waive the requirements at § 1151.3(a)(3)(i), § 1151.3(a)(4) and § 1151.3(a)(5), and to set the constitutional minimum value of the Subject Line at \$227,250, being the price of the 37.5 mile Subject Line (consisting of approximately 454.5 acres) at \$500 per acre.

Secondly, ONW requests that the Board waive the requirements of § 1151.3(a)(11)(i), considering that there have been no shippers who transport over the Subject Line in about 20 years, due to the unauthorized discontinuance of service and abandonment, described above. ONW requests to be allowed to state its case to seek a finding of the public convenience and necessity permit or require acquisition without invoking shippers when there are none.

Respectfully submitted,




C.T. Chappelle, Owner  
Omaha and North Western Railroad  
P.O. Box 51  
Boys Town, Nebraska 68010

Dated: August 17, 2010

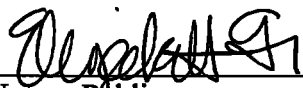
**VERIFICATION**

State of Nebraska     )  
                              )     SS  
County of Douglas    )

Christopher T. Chappellear, being duly sworn, deposes and says that he is the owner of and does business as Omaha and North Western Railroad, that he has read the foregoing Notice of Exemption and knows the facts asserted therein, and that the same are true as stated.

  
\_\_\_\_\_  
Christopher T. Chappellear

SUBSCRIBED AND SWORN TO  
before me this 17 day of August, 2010.

  
\_\_\_\_\_  
Notary Public

My Commission expires: Sept 17, 2013

